

EXHIBIT “C”

Robert Scott Cowan, MD
December 16, 2008

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COURT OF COMMON PLEAS
PHILADELPHIA COUNTY - CIVIL DIVISION
DOCKET NO. 02389

GEOFFREY CROWTHER,

Plaintiff,

Vs.

CONSOLIDATED RAIL CORPORATION

and CSX TRANSPORTATION, INC.,

Defendants.

DEPOSITION OF ROBERT SCOTT COWAN, M.D.

New England Orthopedic Surgeons

300 Birnie Avenue

Springfield, Massachusetts

December 16, 2008

5:20 p.m.

Jonathan P. Lodi

Court Reporter

CATUOGNO COURT REPORTING & STEN-TEL TRANSCRIPTION
Springfield, MA Worcester, MA Boston, MA Lawrence, MA Providence, MA

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<p style="text-align: right;">Page 6</p> <p>1 went into an orthopedic residency program, 2 starting with a surgical internship, at the St. 3 Elizabeth's Hospital in Boston, and then the 4 orthopedic portion was the Boston University 5 affiliated hospitals. That ended in 1983. 6 Afterwards I did a fellowship in spinal surgery at 7 the New England Baptist Hospital. 8 Q. And how long have you been at this 9 practice? 10 A. Fourteen years. 11 Q. And are you board certified? 12 A. Yes. 13 Q. And what's your board in? 14 A. Orthopedic surgery. 15 Q. And when did you obtain certification? 16 A. 1996. 17 Q. Did you have to retake the test? 18 A. I recertified ten years later. 19 Q. And have you conducted any research in 20 the area of repetitive stress injuries or 21 cumulative trauma disorders? 22 A. No. 23 Q. And have you had a past experience as 24 an expert witness?</p>	<p style="text-align: right;">Page 8</p> <p>1 Q. State court or Federal? 2 A. State. 3 Q. And do you recall the type of case 4 that was? 5 A. A woman fell off a porch. 6 Q. And do you recall what the outcome of 7 that case was? 8 A. They found for the plaintiff. 9 Q. Have you ever been excluded or not 10 permitted to give your full opinions in any court? 11 A. No. 12 Q. Do you have any connection with the 13 railroad industry? 14 A. I don't. 15 Q. Okay. So no friends, family, or any 16 other connection? 17 A. No. 18 Q. And, Doctor, it's my understanding 19 that you've authored a report in this case, dated 20 November 9th, 2008, which is marked as Exhibit 2, 21 is that correct? 22 A. Yes. 23 Q. And one of the things I noted was that 24 -- or at least on the copy that I received -- is</p>
<p style="text-align: right;">Page 7</p> <p>1 A. Yes. 2 Q. Can you tell me the type of cases that 3 you've served in as an expert? 4 A. Auto accident cases, medical 5 malpractice cases, and Workers' Compensation 6 cases. 7 Q. Have you ever -- is this your first 8 railroad case? 9 A. Yes. 10 Q. And the auto accident cases, was that 11 primarily for your patient, or was that as a 12 defense medical expert? 13 A. Primarily for patients. 14 Q. And the medical malpractice, is that 15 for the defense? 16 A. Yes. 17 Q. And the Workers' Compensation would be 18 probably for your patients? 19 A. Yes. 20 Q. And have you ever testified live, in 21 court? 22 A. Yes. 23 Q. And where have you testified? 24 A. In Springfield.</p>	<p style="text-align: right;">Page 9</p> <p>1 that it wasn't signed. Is your copy signed? 2 A. My copy is not signed. 3 Q. Is there anything -- have you had a 4 chance to review the report in advance of your 5 deposition? 6 A. I did. 7 Q. And did you meet with Mr. Joyce today? 8 A. I did. 9 Q. I'm sorry? 10 A. I did. 11 Q. And what did you guys talk about? 12 A. We talked about this report. We 13 talked about what I might expect from this 14 deposition. 15 Q. And what were you told in that regard? 16 A. That we would discuss causality. That 17 we would discuss, possibly, statutes of 18 limitations. That we would discuss disability. 19 Q. And what was the discussion about 20 disability? 21 A. The extent of disability for this 22 patient. 23 Q. And how about the statute of 24 limitations?</p>

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<p>1 A. Whether or not it had any bearing on 2 this case. 3 Q. And did it have any bearing in the 4 course of your conversations? 5 A. No. 6 Q. What were you specifically told about 7 the statute of limitations? 8 A. That there's a time period of two to 9 three years that a worker would have to file a 10 claim with respect to a given injury. 11 Q. Anything else? 12 A. No. 13 Q. Was there a discussion about whether 14 or not Mr. Crowther had met that criteria, that he 15 filed a common claim? 16 A. Yes, we did discuss that he had filed 17 a claim. And it was my opinion that that claim 18 was within the statute of limitations, based on 19 the knowledge I have of his injury. 20 Q. And have you reviewed any outside 21 medical records involving Mr. Crowther? 22 A. No. 23 Q. And what was the discussion about 24 causality?</p>	<p>1 A. Yes. 2 Q. How much were you paid? 3 A. For the narrative report, \$500. 4 Q. And, excuse me, are there any other 5 drafts of this report? 6 A. I don't recall any other drafts. 7 Q. Did you receive any other 8 communications from Mr. Joyce after you did your 9 narrative report? 10 A. I don't recall any other 11 communications. 12 Q. Can you tell me what you did to 13 review, to come to your opinions and conclusions 14 that are set forth in your report? 15 A. I reviewed my office notes. 16 Q. Did you do anything else? 17 A. I reviewed the AMA guidelines to 18 permanent impairment. 19 Q. But you didn't review Mr. Crowther's 20 deposition or any of the other file materials 21 exchanged between the parties, is that accurate? 22 A. That's accurate. 23 Q. And you've not seen any other outside 24 medical records from any other provider, is that</p>
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<p>1 A. It largely centered on an injury that 2 would occur as a result of cumulative trauma, as 3 opposed to a single event. 4 Q. And was there any other discussion 5 about any other topics? 6 A. No. Just, you know, what I've 7 discussed. 8 Q. And Exhibit 2, which is your report, 9 does it contain all of your opinions in this case? 10 A. Yes. 11 Q. Were there any opinions that were not 12 in the report, that were discussed between you and 13 Mr. Joyce? 14 A. No. 15 Q. And the fact that it's not signed, is 16 that signify to you, at all? I mean, do you stand 17 by what's written? 18 A. I stand by it. 19 Q. Even under the — and maybe this is 20 peculiar to Massachusetts, but under the pains and 21 penalties of perjury? 22 A. Yes. 23 Q. And were you paid for the narrative 24 report?</p>	<p>1 true? 2 A. I have not. 3 Q. And in your report — oh, and I'm 4 sorry. Let me back up. And you didn't do any 5 literature review? 6 A. I did not. 7 Q. And, sir, you'd agree that you're not 8 an ergonomist; would you agree with that? 9 A. I'd agree to that. 10 Q. And you're not an occupational 11 medicine doctor? 12 A. I am not. 13 Q. And occupation medicine doctor is a 14 field of specialty in which those types of doctors 15 focus on causality and work-related issues? 16 A. Yes. 17 Q. And would you agree that you're a 18 treating physician and that your day-to-day job is 19 to treat patients and conduct surgeries? 20 A. Correct. 21 Q. And that you don't do forensic 22 determinations on causation on a routine basis? 23 A. Not on a routine basis. 24 Q. So you don't hold yourself out as a</p>

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<p style="text-align: right;">Page 14</p> <p>1 forensic causality expert, do you?</p> <p>2 A. I don't.</p> <p>3 Q. And you don't hold yourself out as a</p> <p>4 specialist in the area of occupationally-related</p> <p>5 injuries, is that true as well?</p> <p>6 A. Well, I treat a lot of occupational</p> <p>7 injuries. I have a sizable Worker's Comp. patient</p> <p>8 population, and so I'm asked my opinion on</p> <p>9 causality often. What constitutes an expert I</p> <p>10 suppose is variable.</p> <p>11 Q. Well, what percentage of your</p> <p>12 practice, for instance, do you devote to doing</p> <p>13 forensic determinations of causation?</p> <p>14 A. Well, it would be quite small. That</p> <p>15 would be, probably, five -- less than ten percent</p> <p>16 of what I do, five or ten percent.</p> <p>17 Q. Can you tell me what information, if</p> <p>18 any, you received about Mr. Crowther's job and his</p> <p>19 job duties at the Railroad?</p> <p>20 A. Mr. Crowther discussed with me his job</p> <p>21 duties as part of his intake history and physical</p> <p>22 examination.</p> <p>23 Q. And what did he tell you?</p> <p>24 A. Well, essentially what I wrote in my</p>	<p style="text-align: right;">Page 16</p> <p>1 A. No.</p> <p>2 Q. What, if anything, did you do to</p> <p>3 confirm with Mr. Crowther that this was correct</p> <p>4 information that was contained in Mr. Joyce's</p> <p>5 letter?</p> <p>6 A. Well, in the history obtained by Mr.</p> <p>7 Crowther, I, once again, was described what he did</p> <p>8 for work, which was important to my evaluation of</p> <p>9 his case and his condition. And to the extent</p> <p>10 that correlated with what doctor or -- I'm sorry</p> <p>11 -- with what Mr. Joyce said, I put it in a letter.</p> <p>12 Q. Which note would correlate or confirm</p> <p>13 the information that's in Mr. Joyce's letter?</p> <p>14 A. Well, it's not -- it's on an intake</p> <p>15 form that I don't have with me.</p> <p>16 Q. So there are file materials that are</p> <p>17 out there, that haven't been brought?</p> <p>18 A. Correct.</p> <p>19 Q. Do you have access to those or --</p> <p>20 A. Physically, no.</p> <p>21 Q. And so do you -- on this intake form,</p> <p>22 which I would ask to get a copy of, because we</p> <p>23 sent out authorizations for the release of medical</p> <p>24 records, to your practice, and I never got an</p>
<p style="text-align: right;">Page 15</p> <p>1 letter, which is that he was employed for</p> <p>2 thirty-one years as a track laborer; that he</p> <p>3 stated his duties were heavy manual labor,</p> <p>4 welding, repairing railroad tracks; and then</p> <p>5 described repetitive strenuous motion, vibration,</p> <p>6 awkward postures, heavy lifting, and loading.</p> <p>7 Q. Okay. Is that what Mr. Crowther told</p> <p>8 you; did he tell you, in his words, that he did</p> <p>9 heavy manual labor and was exposed to repetitive</p> <p>10 strenuous motion, vibration, awkward postures; I</p> <p>11 mean, were those his words?</p> <p>12 A. That was probably my interpretation of</p> <p>13 what he was telling me.</p> <p>14 Q. Did you lift any of the language from</p> <p>15 -- and I mean that in the nature in which it's</p> <p>16 intended. Did you borrow any of the language from</p> <p>17 Mr. Joyce's letter? because it looks like that</p> <p>18 very paragraph is --</p> <p>19 A. Yes. So I'm sure I did.</p> <p>20 Q. So the basic idea of the job duties</p> <p>21 was taken from Mr. Crowther's lawyer --</p> <p>22 MR. JOYCE: Objection.</p> <p>23 Q. (By Mr. Hall) -- in his letter, is</p> <p>24 that accurate?</p>	<p style="text-align: right;">Page 17</p> <p>1 intake form. I'm not sure why, but -- so it's</p> <p>2 your understanding that on there there would be</p> <p>3 information about his specific job duties?</p> <p>4 A. It's been a long time since I've seen</p> <p>5 it. But I think so.</p> <p>6 Q. When was the last time you think you</p> <p>7 saw it?</p> <p>8 A. Probably at the time of his</p> <p>9 evaluation. I'd have no reason to look at it</p> <p>10 prior to. That would be January 27th, 2006.</p> <p>11 Q. Well, can you tell me the specific</p> <p>12 things that he did as a welder that exposed him to</p> <p>13 repetitive strenuous motion?</p> <p>14 A. As a welder?</p> <p>15 Q. How about a heavy-duty manual -- I'm</p> <p>16 sorry. How about as a track laborer? I</p> <p>17 apologize.</p> <p>18 A. As a track laborer?</p> <p>19 Q. Yes. What were the specific job</p> <p>20 duties that you believe exposed him to repetitive</p> <p>21 strenuous motion or awkward postures or any of the</p> <p>22 other things that are listed in the second</p> <p>23 paragraph of your letter?</p> <p>24 A. Well, I would think any type of track</p>

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<p style="text-align: right;">Page 18</p> <p>1 repair would be repetitive and strenuous.</p> <p>2 Q. Have you ever seen track repair being</p> <p>3 done?</p> <p>4 A. No, I haven't.</p> <p>5 Q. And fair to say you haven't gone out</p> <p>6 and looked at what Mr. Crowther did?</p> <p>7 A. No.</p> <p>8 Q. And you've never examined any of his</p> <p>9 work conditions?</p> <p>10 A. No.</p> <p>11 Q. And Mr. Joyce hasn't provided you with</p> <p>12 any videotape of a person repairing track?</p> <p>13 A. Correct.</p> <p>14 Q. And you've not seen any sort of</p> <p>15 scientific analysis of the exposure he had on his</p> <p>16 job, right?</p> <p>17 A. Correct.</p> <p>18 Q. And I think you previously stated that</p> <p>19 the description of what he did for his work would</p> <p>20 be important, and that you obtained that in your</p> <p>21 history, and that it would be important to your</p> <p>22 conclusion, is that correct, or your opinions?</p> <p>23 A. Correct.</p> <p>24 Q. And so if in fact Mr. Crowther's job</p>	<p style="text-align: right;">Page 20</p> <p>1 work tasks, would be in a better position to</p> <p>2 determine causation?</p> <p>3 MR. JOYCE: Objection.</p> <p>4 THE WITNESS: Well, depending on who</p> <p>5 that person is. I mean, are you talking</p> <p>6 about a physician or --</p> <p>7 Q. (By Mr. Hall) How about a board</p> <p>8 certified occupational medicine doctor; would that</p> <p>9 person, after reviewing the job tasks, be in a</p> <p>10 better position?</p> <p>11 MR. JOYCE: As opposed to somebody</p> <p>12 that's treated the patient and examined him?</p> <p>13 Did you have somebody in mind or are</p> <p>14 you just speaking generally?</p> <p>15 MR. HALL: Do you have an objection?</p> <p>16 MR. JOYCE: Yes, I have an objection.</p> <p>17 MR. HALL: Okay. Then it's noted for</p> <p>18 the record. You can answer.</p> <p>19 THE WITNESS: Yes. I think that the</p> <p>20 -- that it would depend on that doctor's</p> <p>21 familiarity with the patients, in addition</p> <p>22 to his familiarity with the job.</p> <p>23 Q. (By Mr. Hall) Well, would you agree</p> <p>24 that a person who is board certified or trained in</p>
<p style="text-align: right;">Page 19</p> <p>1 turned out not to be as described in Mr. Joyce's</p> <p>2 letter, would you agree that that would affect the</p> <p>3 outcome of your opinion?</p> <p>4 MR. JOYCE: Objection.</p> <p>5 THE WITNESS: If Mr. Crowther's job</p> <p>6 was considerably easier than described in</p> <p>7 either this letter or by the patient, yes.</p> <p>8 Q. (By Mr. Hall) Okay. And so if Mr.</p> <p>9 Crowther, for instance, worked at a safe and</p> <p>10 comfortable pace, was able to take breaks, and was</p> <p>11 not exposed to repetitive strenuous activity and</p> <p>12 sustained awkward postures, then that could change</p> <p>13 the outcome of your opinion, is that correct?</p> <p>14 A. It could be true, yes.</p> <p>15 Q. And you would agree that you don't</p> <p>16 know how much time of the day he spent doing any</p> <p>17 activity at work, is that correct?</p> <p>18 A. That's correct.</p> <p>19 Q. And you've never personally quantified</p> <p>20 his exposure to any potential risk factors at</p> <p>21 work, is that true?</p> <p>22 A. Correct.</p> <p>23 Q. And would you agree that someone who</p> <p>24 evaluated his actual work tasks, or representative</p>	<p style="text-align: right;">Page 21</p> <p>1 occupational medicine, who has reviewed videotape</p> <p>2 of representative job tasks, and who has been to</p> <p>3 railroad sites and has seen the work being done</p> <p>4 personally would be in a better position to</p> <p>5 determine whether or not those job duties caused</p> <p>6 or contributed to the development of a person's</p> <p>7 problems?</p> <p>8 MR. JOYCE: Objection.</p> <p>9 Q. (By Mr. Hall) Would you agree with</p> <p>10 that?</p> <p>11 A. If they'd examined the patient.</p> <p>12 Q. And is the examination of the patient</p> <p>13 -- why is that critical; wouldn't it be reasonable</p> <p>14 for a doctor to review -- to rely on your physical</p> <p>15 examination and notes?</p> <p>16 A. Yes, that would be reasonable.</p> <p>17 Q. And so if a board certified</p> <p>18 occupational medicine doctor reviewed your medical</p> <p>19 notes and those of your partners and actually did</p> <p>20 an analysis of the work duties that Mr. Crowther</p> <p>21 had done, you would agree that that person would</p> <p>22 be in a better position to determine causality?</p> <p>23 MR. JOYCE: Objection.</p> <p>24 THE WITNESS: Yes.</p>

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<p style="text-align: right;">Page 22</p> <p>1 Q. (By Mr. Hall) Is there any other 2 information that you received or reviewed in 3 regards to Mr. Crowther's job? 4 A. No. 5 Q. Did you evaluate his avocational 6 activities in coming to your conclusions? 7 A. No. 8 Q. And you'd agree, sir, that you're not 9 familiar with railroad operations? 10 A. Yes. 11 Q. And you'd agree that in your letter, 12 in your narrative report, that you've not 13 suggested that there are any specific changes to 14 Mr. Crowther's job that has been scientifically 15 demonstrated or would otherwise be -- reasonably 16 anticipated to be preventive of his neck issues? 17 MR. JOYCE: Objection. That's not the 18 purpose of Dr. Cowan's participation in 19 Mr. Crowther's case. 20 THE WITNESS: I don't understand the 21 question. 22 MR. JOYCE: He's not our liability 23 expert, Steve, and you know that. He's a 24 medical doctor, treating physician, surgeon,</p>	<p style="text-align: right;">Page 24</p> <p>1 Q. And what are the risk factors for the 2 development of degenerative disk disease in the 3 neck? 4 A. Genetic predisposition or neck- 5 strenuous manual labor. 6 A. That's probably it. 7 Q. How about age; is age a risk factor? 8 A. Relative. Everybody develops 9 degenerative changes over time, so I suppose so. 10 Q. Are there any other risk factors for 11 the development of degenerative disk disease or 12 arthritis? 13 A. Deformity. 14 Q. Deformity? Anything else? 15 A. That would be the bulk of it. 16 Q. And can you tell me which of the risk 17 factors you ruled out, if any? 18 A. Deformity, trauma, genetics. 19 Q. You didn't rule out age? 20 A. No. He's at an age where, certainly, 21 they're fairly predominant. 22 Q. Okay. I'm sorry. And I just want to 23 -- maybe I just didn't hear you, but he's at an 24 age where it's not unusual for him to have</p>
<p style="text-align: right;">Page 23</p> <p>1 expert medical witness. He's not a 2 liability witness. We have a different 3 liability witness to address that issue. 4 MR. HALL: Okay. Well, I'm just 5 asking him if he has an opinion. 6 Q. (By Mr. Hall) Would you agree that 7 you've not given any opinions that there were any 8 specific changes to Mr. Crowther's job that could 9 have been done by the Railroad that would have 10 prevented his injury? 11 A. Correct. I gave no such opinions. 12 Q. And you hold no such opinion as you 13 sit here today? 14 A. I hold no such opinion. 15 Q. Okay. And, I'm sorry, I think we 16 covered you hadn't reviewed any of the literature 17 regarding the causes of Mr. Crowther's 18 degenerative disk disease, is that correct, in 19 preparation for your report? 20 A. Correct. 21 Q. And do you hold yourself out as an 22 expert in the area of causes of degenerative 23 diseases of the neck? 24 A. Yes.</p>	<p style="text-align: right;">Page 25</p> <p>1 degenerative joint disease in his neck? 2 A. Correct. 3 Q. And so we can agree that his age 4 contributed at least in part to the development of 5 his degenerative disk disease, is that correct? 6 A. Yes. 7 Q. And if you take his job out of the 8 equation, he could have went on to develop the 9 exact same condition he had just -- back up. 10 If we take his job out of the 11 equation, isn't it true that he could have went on 12 to develop the same exact degenerative process in 13 his neck that resulted in his surgery? 14 A. Yes. 15 Q. And is there any way to attribute 16 whether or not his surgery was due to a function 17 of age more than a function of his job? 18 MR. JOYCE: Objection. 19 THE WITNESS: Based on chronology of 20 symptoms. 21 Q. (By Mr. Hall) When did he begin to 22 develop signs or symptoms of degenerative disk 23 disease? 24 A. His complaints of neck injury or arm</p>

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<p style="text-align: right;">Page 26</p> <p>1 pain started just prior to evaluation by Dr. 2 Wenner for his thumb condition, which would have 3 been late in 2005. 4 Q. And so based on the fact that he began 5 to have neck pain, according to your file, in 6 2005, how is that significant? I'm sorry. Maybe 7 I'm not picking it up. 8 A. Well, there comes a point in the 9 patient's degenerative disk process where it 10 becomes symptomatic. And in this case, that was 11 2005. The patient was fifty-four years of age. 12 He had been working on the Railroad, at that 13 point, for thirty-odd years. And can I 14 differentiate exactly whether it was age-related 15 or job-related? No. But it was my opinion that 16 it would be a combination of the two. 17 Q. Okay. So fifty/fifty? 18 MR. JOYCE: Objection. There's no 19 reason for apportionment or allocation. 20 There's no requirement to do it. Note my 21 objection. 22 Q. (By Mr. Hall) Is it your opinion it 23 was fifty/fifty? 24 A. Sure.</p>	<p style="text-align: right;">Page 28</p> <p>1 to -- I'm just trying to imagine stooped. 2 Is that knees bent all the way down 3 and lifting from the ground up; is that what you 4 mean? 5 A. No. Stooped just means bent at the 6 waist. 7 Q. Just bent at the waist. Okay. And 8 it's not just being bent at the waist; it's 9 lifting? 10 A. Correct. 11 Q. And do you have any information about 12 how often Mr. Crowther would bend at his waist and 13 do lifting? 14 A. No. 15 Q. Are there any other things that fall 16 under the category of neck-strenuous manual labor? 17 A. Labor requiring repetitive rotation of 18 the neck. 19 Q. And what does that mean? 20 A. Repetitive rotations, rotating from 21 one side to the other, lateral rotation. 22 Q. Moving your neck left and right? 23 A. Yes. 24 Q. Up and down?</p>
<p style="text-align: right;">Page 27</p> <p>1 Q. And is it unusual for someone in, say, 2 the fifth decade of life to have degenerative 3 changes in their neck as a result of age? 4 A. No. It's fairly common. 5 Q. It's fairly common? Is it, like, 6 fifty, sixty, seventy, eighty percent of the 7 population who have degenerative changes? 8 A. Sixty. 9 Q. Sixty percent, at the fifth decade of 10 life? 11 A. Yes. 12 Q. And I think you said -- when I asked 13 you about the personal risk factors, I think you 14 said -- and I'm trying to check my notes -- but 15 manual neck labor; is that -- and I apologize. I 16 had manual labor, neck, stress. 17 What is manual labor that involves 18 stressing of the neck; can you describe that for 19 me? 20 A. It would be anything done in a stooped 21 position. Anything requiring lifting from a 22 stooped position. 23 Q. And so -- and does it have to be 24 sustained a certain amount of time or does it have</p>	<p style="text-align: right;">Page 29</p> <p>1 A. Up and down's more covered with the 2 first one, but -- 3 Q. Okay. And does the rotation of neck 4 have to go to any certain degree in order to be 5 problematic or -- 6 A. No, it just has to be sustained over 7 years. 8 Q. And when you say, "repetitive," I 9 mean, what's the cycle have to be in order for it 10 to be repetitive? 11 A. I'm not sure I understand the 12 question. 13 Q. Okay. For it to qualify -- I mean, I 14 can rotate my neck; I can look back and forth; but 15 what's the cycle time for it to be classified as 16 repetitive, in your opinion? 17 A. I would say if you're rotating back 18 and forth on a routine basis, four or five times a 19 minute, over the course of a workday. 20 Q. And do you have any specific 21 information about Mr. Crowther -- 22 A. No. 23 Q. Okay. -- in that regard? 24 A. No.</p>

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<p style="text-align: right;">Page 30</p> <p>1 Q. Anything else that falls into the</p> <p>2 category of repetitive manual neck labor?</p> <p>3 A. Well, any actual lifting with the</p> <p>4 neck, which I'm not sure he would encounter.</p> <p>5 Q. So as far as you know, that's not a</p> <p>6 personal risk factor for him because he didn't</p> <p>7 have lifting with his neck?</p> <p>8 A. He didn't describe any.</p> <p>9 Q. Is that like putting water on your</p> <p>10 head and walking with it?</p> <p>11 A. You know who does that are guys who</p> <p>12 put in the windshields because they have to push</p> <p>13 with their head and their hands at the same time.</p> <p>14 Q. There's none of that, that you know</p> <p>15 of, in his railroad --</p> <p>16 A. I don't know of any.</p> <p>17 Q. Any other risk factors that we haven't</p> <p>18 already talked about with regard to repetitive</p> <p>19 neck or, I'm sorry, manual intensive neck, in that</p> <p>20 area that we've been talking about?</p> <p>21 A. Neck-strenuous labor.</p> <p>22 Q. Neck-strenuous labor. Thank you.</p> <p>23 A. No.</p> <p>24 Q. And so to the extent that he was not</p>	<p style="text-align: right;">Page 32</p> <p>1 neck-strenuous labor is required to produce</p> <p>2 injury?</p> <p>3 A. It varies from person to person.</p> <p>4 Q. Is there any way to predict whether or</p> <p>5 not someone who does neck-strenuous labor is going</p> <p>6 to develop degenerative disk disease of the neck</p> <p>7 because of that neck-strenuous labor?</p> <p>8 A. No.</p> <p>9 Q. Is there any way to prevent the</p> <p>10 development of degenerative disk disease in the</p> <p>11 neck, irrespective of work?</p> <p>12 MR. JOYCE: Objection.</p> <p>13 THE WITNESS: No.</p> <p>14 Q. (By Mr. Hall) The aging process is</p> <p>15 pretty hard on the body and on our disks and our</p> <p>16 vertebrae, right?</p> <p>17 A. It can be.</p> <p>18 Q. It can be. And you'd agree, sir, that</p> <p>19 you don't hold yourself out as an expert in the</p> <p>20 work-related literature that deals with the</p> <p>21 degenerative disk disease; would you agree with</p> <p>22 that?</p> <p>23 MR. JOYCE: Objection.</p> <p>24 THE WITNESS: Work-related literature?</p>
<p style="text-align: right;">Page 31</p> <p>1 exposed to neck-strenuous labor, that would be a</p> <p>2 good thing, is that correct?</p> <p>3 A. Correct.</p> <p>4 Q. And if a qualified person like an</p> <p>5 ergonomist went out to review the job and analyze</p> <p>6 the type of activities that were done by someone</p> <p>7 like Mr. Crowther and they came to the conclusion</p> <p>8 that the job does not contain tasks that contain</p> <p>9 neck-strenuous labor, would that alter your</p> <p>10 opinion?</p> <p>11 MR. JOYCE: Objection. Is it a</p> <p>12 hypothetical; are you asking him to</p> <p>13 speculate here?</p> <p>14 Q. (By Mr. Hall) Would that change your</p> <p>15 opinion?</p> <p>16 MR. JOYCE: Note my objection.</p> <p>17 THE WITNESS: It could.</p> <p>18 Q. (By Mr. Hall) And so if in fact the</p> <p>19 job did not contain a significant amount of</p> <p>20 neck-strenuous labor, that would change your</p> <p>21 opinion in fact, wouldn't it, sir?</p> <p>22 MR. JOYCE: Objection.</p> <p>23 THE WITNESS: It could.</p> <p>24 Q. (By Mr. Hall) And how much</p>	<p style="text-align: right;">Page 33</p> <p>1 Q. (By Mr. Hall) Yes. The literature</p> <p>2 that -- the scientific literature that deals with</p> <p>3 work relatedness in the development of neck</p> <p>4 issues. Would you agree that you don't hold</p> <p>5 yourself out as an expert in that body of</p> <p>6 literature?</p> <p>7 MR. JOYCE: Objection.</p> <p>8 THE WITNESS: Correct.</p> <p>9 Q. (By Mr. Hall) Okay. And are you</p> <p>10 aware of any valid studies that have been done</p> <p>11 associating Mr. Crowther's work duties at the</p> <p>12 Railroad with the development of degenerative disk</p> <p>13 disease of the neck?</p> <p>14 A. Say that again.</p> <p>15 Q. Sure. Are you aware of any valid</p> <p>16 studies that have been associating Mr. Crowther's</p> <p>17 work duties with the development of degenerative</p> <p>18 disk disease in the neck?</p> <p>19 A. No.</p> <p>20 Q. And we can agree, sir, that there is</p> <p>21 no valid recognized dose response relationship</p> <p>22 between neck-strenuous labor and the development</p> <p>23 of degenerative disk disease in the neck, is that</p> <p>24 true?</p>

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<p>1 A. Correct.</p> <p>2 Q. And that's really what we're dealing</p> <p>3 with in Mr. Crowther's case, is he had</p> <p>4 degenerative disk disease in his neck, correct?</p> <p>5 A. Right.</p> <p>6 Q. And you would agree that, in coming to</p> <p>7 a conclusion on causation, that it's important to</p> <p>8 review as much information as you can; would you</p> <p>9 agree with that?</p> <p>10 A. Correct.</p> <p>11 Q. And did you ask Mr. Crowther if he had</p> <p>12 any issues in terms of trauma associated with his</p> <p>13 neck?</p> <p>14 A. Yes.</p> <p>15 Q. And what did he tell you?</p> <p>16 A. He did not.</p> <p>17 Q. And can we agree that once somebody</p> <p>18 develops degenerative disk disease of the neck --</p> <p>19 my neck just cracked. Sorry.</p> <p>20 Can we agree that once somebody has</p> <p>21 degenerative disk disease in their neck and it</p> <p>22 becomes symptomatic that, really, any use of the</p> <p>23 neck or head can produce symptoms?</p> <p>24 A. It can.</p>	<p>1 see that you came to any opinion that his job</p> <p>2 duties accelerated or aggravated Mr. Crowther's</p> <p>3 actual disease process, is that true?</p> <p>4 MR. JOYCE: Are you asking him whether</p> <p>5 his job aggravated or worsened the</p> <p>6 degenerative disk disease; is that your</p> <p>7 question?</p> <p>8 MR. HALL: You can answer the</p> <p>9 question.</p> <p>10 THE WITNESS: I could not say whether</p> <p>11 -- I could say that it rendered it more</p> <p>12 symptomatic. Is that what you're asking?</p> <p>13 I'm not sure what you're asking.</p> <p>14 Q. (By Mr. Hall) Okay. As you sit here</p> <p>15 today, you don't have an opinion, within a</p> <p>16 reasonable degree of medical certainty, and under</p> <p>17 the pains and penalties of perjury, as set forth</p> <p>18 in your report, that his job actually increased</p> <p>19 the disease process in his neck?</p> <p>20 MR. JOYCE: Objection.</p> <p>21 THE WITNESS: I did not render an</p> <p>22 opinion there, correct.</p> <p>23 Q. (By Mr. Hall) And you don't have such</p> <p>24 an opinion within a reasonable degree of medical</p>
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<p>1 Q. And it doesn't necessarily have to be</p> <p>2 neck-strenuous labor in order to do that, right?</p> <p>3 A. Correct.</p> <p>4 Q. It could just be simply turning your</p> <p>5 head could produce symptoms?</p> <p>6 A. Yes.</p> <p>7 Q. And can we agree, sir, that there's a</p> <p>8 difference between the concept of activity-</p> <p>9 exacerbating symptoms with the concept of an</p> <p>10 actual increase in the disease process?</p> <p>11 A. I'm sorry. Once more.</p> <p>12 Q. Yes. I'm just trying to figure out,</p> <p>13 can we agree that someone can be symptomatic,</p> <p>14 maybe they turned their head and they turned their</p> <p>15 neck and they produced the symptoms, that being</p> <p>16 one concept; and would you agree that that doesn't</p> <p>17 necessarily mean that the disease process is</p> <p>18 changing?</p> <p>19 A. I agree with that.</p> <p>20 Q. So you can have symptoms without</p> <p>21 necessarily increasing the disease process,</p> <p>22 correct?</p> <p>23 A. Correct.</p> <p>24 Q. And in reading your report, I don't</p>	<p>1 certainty and under the pains and penalties of</p> <p>2 perjury?</p> <p>3 A. Presently?</p> <p>4 Q. Yes.</p> <p>5 A. I do think his job duties aggravated</p> <p>6 his underlying cervical degenerative disk disease,</p> <p>7 yes.</p> <p>8 Q. Aggravated his symptoms or actually</p> <p>9 aggravated the underlying disease process; in</p> <p>10 other words, do you have any objective scientific</p> <p>11 evidence to show that his job duties at the</p> <p>12 Railroad actually increased the disease process?</p> <p>13 MR. JOYCE: He just said that's his</p> <p>14 opinion.</p> <p>15 THE WITNESS: That's my -- my opinion</p> <p>16 is that it did. But do I have repetitive</p> <p>17 MRIs showing a progression? No, I don't.</p> <p>18 Q. (By Mr. Hall) Okay. Do you have any</p> <p>19 diagnostic studies showing a comparison?</p> <p>20 A. No.</p> <p>21 Q. And do you have any objective</p> <p>22 scientific evidence to make that conclusion?</p> <p>23 A. I don't, no. It's my opinion.</p> <p>24 Q. And what's the basis for that opinion?</p>

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<p style="text-align: right;">Page 38</p> <p>1 You've not seen his job. I mean, what is the 2 basis for that opinion? 3 A. I based that opinion, A, that he has a 4 degenerative disk disease process going on based 5 on MRIs that I was able to visualize; and, second, 6 that, in my opinion, the work that he described 7 were work duties that I considered to be 8 aggravating to a cervical degenerative disk 9 disease process. 10 Q. If that was true, then why didn't you 11 put that in your report? 12 A. I did. Mr. Crowther sustained 13 cumulative micro-trauma to his neck as a result of 14 strenuous labor on the Railroad over thirty years. 15 Q. When I read that, I saw that that was 16 your opinion, that his job duties caused the 17 underlying degenerative disk disease. 18 A. No. 19 Q. So that's not your opinion? 20 A. No. 21 Q. So we can agree that his job duties 22 did not cause the underlying degenerative disk 23 disease? 24 MR. JOYCE: Objection.</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. And the MRI that you took was February 2 of 2006, is that right? Do you have a copy of 3 that? 4 A. March. March 1, 2006. That's what I 5 have. 6 Q. I have an exam date of 2/8/06. And it 7 was signed -- can I see where you're getting the 8 date from? You only sent him out once, is that 9 right? 10 A. Correct. 11 Q. For an MRI? 12 A. Yes. 13 Q. And that was Dr. Deborah Green? 14 A. Yes. 15 Q. So the exam date was 2/8 of '06. Can 16 we agree on that? 17 A. Yes. 18 Q. And do you have that in front of you, 19 the MRI? Can I take a look at it? This is the 20 only copy I have. 21 A. I don't have a copy of it. 22 Q. Do you mind if I walk around and we 23 can look at it together? 24 MR. JOYCE: I have a copy, if you want</p>
<p style="text-align: right;">Page 39</p> <p>1 THE WITNESS: That's correct. 2 Q. (By Mr. Hall) And so, what this 3 paragraph is saying is that -- if I understand 4 correctly, based on what you just told me -- is 5 that his job duties may have accelerated the 6 otherwise non-work-related degenerative disk 7 disease, is that correct? 8 A. Correct. 9 Q. So really, your opinion is based 10 solely on an aggravation of a pre-existing, 11 non-work-related injury of -- 12 MR. JOYCE: Objection. I think his 13 report also talked about it being a 14 contributing factor, along with an 15 aggravation of the condition. 16 MR. HALL: You can answer the 17 question. 18 THE WITNESS: Can you restate it? 19 MR. HALL: Sure. 20 Q. (By Mr. Hall) Your opinion is that 21 his job duties at the Railroad aggravated or 22 worsened a pre-existing, non-work-related 23 condition, is that correct? 24 A. That's correct.</p>	<p style="text-align: right;">Page 41</p> <p>1 it. 2 MR. HALL: You have a copy of it? 3 MR. JOYCE: Yes. 4 Q. (By Mr. Hall) Okay. And we're 5 referring, for the record, to the MRI Center 6 2/8/06 MRI done of Mr. Crowther's cervical spine, 7 done by Dr. Deborah Green, correct? 8 A. Correct. 9 Q. And can you go through the findings 10 for me? 11 A. Sure. 12 Q. And maybe put it into laymen's terms 13 for me, if that's possible? 14 A. Sure. 15 Q. Okay. Maybe starting with C2-3, which 16 is the first finding, is that correct? 17 A. Disk is of normal height, meaning that 18 he hadn't lost any height. It diminished signal 19 intensity, meaning that the disk was dry, no bulge 20 or herniation. 21 Q. Okay. And is diminished signal 22 intensity or dryness something that's typical of 23 age-related -- 24 A. Yes.</p>

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<p style="text-align: right;">Page 66</p> <p>1 Q. How did you assess Mr. Crowther's</p> <p>2 surgery, in terms of what you did with the AMA?</p> <p>3 A. Well, I assessed that he did well. He</p> <p>4 didn't have persistent radicular findings,</p> <p>5 weakness or numbness. But just based on the</p> <p>6 surgery, that's how the AMA guideline worked for</p> <p>7 that particular --</p> <p>8 Q. And is this the best possible</p> <p>9 impairment rating you can get, having neck</p> <p>10 surgery?</p> <p>11 A. Best in what sense?</p> <p>12 Q. Best in terms of the least amount of</p> <p>13 disability.</p> <p>14 MR. JOYCE: Objection.</p> <p>15 Q. (By Mr. Hall) I mean, is this the</p> <p>16 best possible outcome he could have on the AMA</p> <p>17 guidelines, based upon the fact that he had</p> <p>18 surgery because of a radiculopathy?</p> <p>19 A. I believe so. I think it's eighteen</p> <p>20 to twenty-three percent.</p> <p>21 Q. So this is the best possible outcome</p> <p>22 for him, based on the AMA guidelines, is that</p> <p>23 correct?</p> <p>24 A. Correct.</p>	<p style="text-align: right;">Page 68</p> <p>1 A. Next July.</p> <p>2 Q. Oh, you saw him in July. I had -- I</p> <p>3 apologize. So, like, a year and a half? Okay.</p> <p>4 And in terms Mr. Crowther's other</p> <p>5 orthopedic conditions, you would defer to the</p> <p>6 other doctors who treated him in your practice, is</p> <p>7 that right?</p> <p>8 A. That's right.</p> <p>9 Q. And that would also include the</p> <p>10 disability ratings, as well?</p> <p>11 A. Correct.</p> <p>12 Q. And so is it your understanding that</p> <p>13 he had excellent results or good results of those</p> <p>14 issues, as well?</p> <p>15 A. I actually don't have notations, in</p> <p>16 regards to either his thumb or his knees, so I</p> <p>17 can't really say how he's done with respect to</p> <p>18 either of those.</p> <p>19 Q. And you just defer to those doctors on</p> <p>20 that?</p> <p>21 A. I do.</p> <p>22 Q. Okay. Your last exam -- I know we</p> <p>23 talked a little bit about it being a good surgical</p> <p>24 result. Did Mr. Crowther regain his full range of</p>
<p style="text-align: right;">Page 67</p> <p>1 Q. And people who have an eighteen-</p> <p>2 percent, whole-body impairment rating can do</p> <p>3 medium-type jobs?</p> <p>4 A. Sure.</p> <p>5 Q. Could they do heavy-type jobs?</p> <p>6 A. Hypothetically, sure.</p> <p>7 Q. Can you give me just a moment, and I</p> <p>8 can review my notes?</p> <p>9 A. Sure.</p> <p>10 Q. Thank you. Do you have an opinion on</p> <p>11 Mr. Crowther's long-term prognosis, in terms of</p> <p>12 his neck?</p> <p>13 A. He should do fine.</p> <p>14 Q. When was the last time he went to see</p> <p>15 you?</p> <p>16 A. Last seen by me July the 6th, 2007, I</p> <p>17 believe.</p> <p>18 Q. And everything was satisfactory at</p> <p>19 that point?</p> <p>20 A. Yes.</p> <p>21 Q. And you haven't seen him in almost two</p> <p>22 years?</p> <p>23 A. It'll be two years next July.</p> <p>24 Q. Next January?</p>	<p style="text-align: right;">Page 69</p> <p>1 motion?</p> <p>2 A. Of--</p> <p>3 Q. His neck. I'm sorry.</p> <p>4 A. Typically, no. Most patients who have</p> <p>5 a fusion lose some range of motion, but it's not</p> <p>6 of any functional consequence.</p> <p>7 Q. And is that consistent with -- I'm</p> <p>8 sorry. Is that how Mr. Crowther's case turned out</p> <p>9 to be?</p> <p>10 A. Yes.</p> <p>11 Q. So any limitation on how he can rotate</p> <p>12 his neck has no functional consequence?</p> <p>13 A. Correct.</p> <p>14 Q. And one of the things I did want to</p> <p>15 ask you about -- and I apologize to go back -- but</p> <p>16 do you have any information about Mr. Crowther's</p> <p>17 exposure to vibration to his neck?</p> <p>18 A. I don't have any specifics on that,</p> <p>19 no.</p> <p>20 Q. I'm just trying to figure out -- do</p> <p>21 you have any information to say that he was</p> <p>22 exposed to vibration in his neck?</p> <p>23 A. Only what's in Mr. Joyce's note here.</p> <p>24 Q. And in order for a vibration to affect</p>

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<p style="text-align: right;">Page 70</p> <p>1 the neck, I mean, would you have to have direct</p> <p>2 contact with some sort of vibrating source?</p> <p>3 A. Yes.</p> <p>4 Q. And would the contact have to be on</p> <p>5 the spine itself?</p> <p>6 A. No. It could travel through the arms</p> <p>7 or legs.</p> <p>8 Q. And have you made any assessment of</p> <p>9 his vibration exposure at all?</p> <p>10 A. No.</p> <p>11 Q. And are you aware of the studies that</p> <p>12 indicate that exposure to whole body vibration is</p> <p>13 not causally related to the development of</p> <p>14 musculoskeletal disorders of the neck?</p> <p>15 MR. JOYCE: Objection.</p> <p>16 Q. (By Mr. Hall) Are you aware of that?</p> <p>17 A. I'm not aware of any study with</p> <p>18 respect to that.</p> <p>19 Q. Is the National Institute of</p> <p>20 Occupational Safety and Health an authoritative</p> <p>21 body?</p> <p>22 A. Yes.</p> <p>23 Q. And if they indicated, in a</p> <p>24 publication regarding work-relatedness, that</p>	<p style="text-align: right;">Page 72</p> <p>1 that qualifies as a restriction that has</p> <p>2 to do with all of his impairments; neck,</p> <p>3 arm, knees. Was that what you were speaking</p> <p>4 of?</p> <p>5 MR. HALL: Well, any particular</p> <p>6 medical restrictions with regard to his</p> <p>7 neck, because I think we agreed before that</p> <p>8 you would defer to -- the disability ratings</p> <p>9 -- to the other doctors who treated him.</p> <p>10 THE WITNESS: Well --</p> <p>11 Q. (By Mr. Hall) Is he disabled because</p> <p>12 of his neck?</p> <p>13 MR. JOYCE: He already answered that</p> <p>14 question yes.</p> <p>15 THE WITNESS: Yes, he's disabled with</p> <p>16 regards to his neck. As I said, I think he</p> <p>17 could go back to some work, but not his</p> <p>18 previous line of work and duties.</p> <p>19 Q. (By Mr. Hall) Okay. And if we were</p> <p>20 trying to figure out which job he could go and do,</p> <p>21 are there any medical restrictions?</p> <p>22 A. Yes.</p> <p>23 Q. Could he, for instance, lift up to</p> <p>24 twenty-five pounds or --</p>
<p style="text-align: right;">Page 71</p> <p>1 whole-body vibration exposure has not been</p> <p>2 causally related -- there's insufficient evidence</p> <p>3 to formulate a causal association between</p> <p>4 whole-body vibration and the development of</p> <p>5 musculoskeletal disorders of the neck and</p> <p>6 shoulder -- would you agree with them and defer to</p> <p>7 them?</p> <p>8 MR. JOYCE: Objection.</p> <p>9 THE WITNESS: Yes.</p> <p>10 Q. (By Mr. Hall) And you don't have any</p> <p>11 independent scientific studies showing that</p> <p>12 exposure to vibration causes degenerative disk</p> <p>13 disease in the neck, do you?</p> <p>14 A. No.</p> <p>15 Q. Are you aware of any at all?</p> <p>16 A. No.</p> <p>17 Q. In terms of -- okay. Are there any</p> <p>18 current medical restrictions on Mr. Crowther?</p> <p>19 A. No.</p> <p>20 Q. So as far as you're concerned, in</p> <p>21 terms of his neck, he has no medical restrictions?</p> <p>22 MR. JOYCE: Objection.</p> <p>23 THE WITNESS: Well, I said he was</p> <p>24 totally permanently disabled. I suppose</p>	<p style="text-align: right;">Page 73</p> <p>1 A. Yes.</p> <p>2 Q. -- fifty pounds?</p> <p>3 A. I would -- you know, once again, I</p> <p>4 haven't seen him for a year and a half. And</p> <p>5 probably the better way to judge this would be</p> <p>6 something like a functional capacity evaluation.</p> <p>7 But I would say he would have lifting</p> <p>8 restrictions. He would be best not doing overhead</p> <p>9 work. He would be best not working in a stooped</p> <p>10 position, and best not lifting below his knees or</p> <p>11 crawling into tight, cramped spaces.</p> <p>12 Q. But in order to really make an</p> <p>13 assessment, you need a functional capacity exam?</p> <p>14 A. I think it's helpful.</p> <p>15 Q. And you're not aware of Mr. Crowther</p> <p>16 having a functional capacity exam, is that</p> <p>17 correct?</p> <p>18 A. I am not.</p> <p>19 Q. And you didn't do a functional</p> <p>20 capacity exam before doing your percentage or</p> <p>21 calculation on his impairment, is that correct?</p> <p>22 A. No. It wouldn't have figured in.</p> <p>23 MR. HALL: Okay. I don't think I have</p> <p>24 any other questions.</p>

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<p style="text-align: right;">Page 74</p> <p>1 MR. JOYCE: Just real briefly.</p> <p>2 EXAMINATION</p> <p>3 Q. (By Mr. Joyce) Dr. Cowan, in your</p> <p>4 opinion, Geoff's job as a trackman at the Railroad</p> <p>5 was a contributing factor in the development of</p> <p>6 his degenerative disk disease in his neck?</p> <p>7 MR. HALL: Objection.</p> <p>8 THE WITNESS: Yes.</p> <p>9 Q. (By Mr. Joyce) In your opinion,</p> <p>10 Geoff's job as a trackman at the Railroad</p> <p>11 aggravated and worsened his degenerative disk</p> <p>12 disease in his neck?</p> <p>13 A. Yes.</p> <p>14 MR. HALL: Objection.</p> <p>15 Q. (By Mr. Joyce) In your opinion, Geoff</p> <p>16 is occupationally disabled from working as a</p> <p>17 trackman at the Railroad as to his cervical</p> <p>18 condition?</p> <p>19 MR. HALL: Objection.</p> <p>20 THE WITNESS: Yes.</p> <p>21 MR. JOYCE: Those are all the</p> <p>22 questions I have. Thank you.</p> <p>23 EXAMINATION</p> <p>24 Q. (By Mr. Hall) Let me ask you a</p>	<p style="text-align: right;">Page 76</p> <p>1 saying that the work caused the degenerative</p> <p>2 disk disease. He's saying that the work was</p> <p>3 a contributing factor. Is that what you're</p> <p>4 getting at?</p> <p>5 MR. HALL: No. You can answer my</p> <p>6 question. Go ahead.</p> <p>7 THE WITNESS: All right. I believe</p> <p>8 that Mr. Crowther would have developed</p> <p>9 degenerative disk disease to his neck</p> <p>10 independent of work.</p> <p>11 Q. (By Mr. Hall) All right. And so your</p> <p>12 opinion is solely that there was an aggravation of</p> <p>13 a pre-existing, non-work-related condition, is</p> <p>14 that correct?</p> <p>15 A. That's correct.</p> <p>16 Q. And we talked about aggravation and</p> <p>17 worsening and we agreed that there are two</p> <p>18 concepts that are involved there, the worsening or</p> <p>19 aggravation of symptoms versus aggravation and</p> <p>20 worsening of the actual disease process, correct?</p> <p>21 A. Correct.</p> <p>22 Q. And from when you evaluated him in</p> <p>23 March of '06, to when he had his surgery in</p> <p>24 January of '07, you didn't see a worsening of the</p>
<p style="text-align: right;">Page 75</p> <p>1 follow-up, because you told me on the record that</p> <p>2 the paragraph regarding your opinion was solely to</p> <p>3 an aggravation.</p> <p>4 A. Correct.</p> <p>5 Q. Do you recall that testimony?</p> <p>6 A. Yes.</p> <p>7 Q. And so we can agree that his</p> <p>8 degenerative disk disease was completely</p> <p>9 non-work-related, correct?</p> <p>10 MR. JOYCE: Objection.</p> <p>11 Q. (By Mr. Hall) The development -- the</p> <p>12 original development of his degenerative disk</p> <p>13 disease was not related to his job --</p> <p>14 MR. JOYCE: Objection.</p> <p>15 Q. (By Mr. Hall) -- is that correct?</p> <p>16 MR. JOYCE: I think that that --</p> <p>17 Q. (By Mr. Hall) Is that correct?</p> <p>18 MR. JOYCE: -- testimony speaks for</p> <p>19 itself.</p> <p>20 Q. (By Mr. Hall) You told me that it was</p> <p>21 not caused by work, right?</p> <p>22 MR. JOYCE: We're not -- there's a</p> <p>23 distinction between "caused" and "a</p> <p>24 contributing factor" here, Steve. He's not</p>	<p style="text-align: right;">Page 77</p> <p>1 actual disease process, is that correct?</p> <p>2 A. That is correct.</p> <p>3 Q. And so in terms of his work from that</p> <p>4 time period, from -- I believe it was March of '06</p> <p>5 -- until he went off in January and had surgery,</p> <p>6 his job didn't change his degenerative disk</p> <p>7 disease, correct?</p> <p>8 A. It did not appear to change his disk</p> <p>9 disease, correct.</p> <p>10 Q. And in terms of his symptoms, did you</p> <p>11 note any increasing symptoms from his -- from the</p> <p>12 time period of March of '06 until January of '07?</p> <p>13 A. I did not.</p> <p>14 Q. So in terms of his job duties creating</p> <p>15 any problems, in your opinion, there wasn't any</p> <p>16 problems created from at least March of '06, until</p> <p>17 the time he had surgery in '07?</p> <p>18 A. I didn't see any change, no.</p> <p>19 Q. Okay. And you also agree that Mr.</p> <p>20 Crowther could do some sort of light, medium, or</p> <p>21 medium-duty work, correct, based on his current</p> <p>22 condition right now?</p> <p>23 A. No. Only based on his neck. In sum</p> <p>24 total with his knees and his other issues, I will</p>

20 (Pages 74 to 77)